

ESHB 1158 - S COMM AMD

By Committee on Government Operations & Elections

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 29.33.041 and 1990 c 59 s 18 are each amended to read
4 as follows:

5 The secretary of state shall inspect, evaluate, ~~((and publicly))~~
6 test, and hold a public demonstration of all voting systems or
7 components of voting systems that are submitted for review under RCW
8 29.33.051. The secretary of state shall determine whether the voting
9 systems conform with all of the requirements of this title, the
10 applicable rules adopted in accordance with this title, and with
11 generally accepted safety requirements. The secretary of state shall
12 also determine whether the voting systems accommodate ranked voting.
13 The secretary of state shall post the report of certification to a
14 publicly available electronic medium and transmit a ~~((copy of the~~
15 ~~report of any))~~ notice of the examination ~~((under this section)),~~
16 within thirty days after completing the examination, to the county
17 auditor of each county.

18 **Sec. 2.** RCW 29.33.081 and 1990 c 59 s 21 are each amended to read
19 as follows:

20 ~~((If))~~ Only voting systems or devices or vote tallying systems
21 ~~((are to))~~ that have been approved by the secretary of state may be
22 used for conducting a primary or election~~((, only those that have the~~
23 ~~approval of the secretary of state or had been approved under this~~
24 ~~chapter or chapter 29.34 RCW before March 22, 1982, may be used)).~~ Any
25 modification, change, or improvement to any voting system or component
26 of a system ~~((that))~~ must be submitted to the secretary of state for
27 review. After review, the modification may be accepted if it does not
28 impair ~~((its))~~ system accuracy, efficiency, or capacity or extend
29 ~~((its))~~ system function~~((, may be made without)).~~ If, after review,

1 the secretary of state determines that the modification does impair
2 system accuracy, efficiency, or capacity or extend system function, the
3 modification must be submitted for reexamination or reapproval by the
4 secretary of state under RCW 29.33.041.

5 **Sec. 3.** RCW 29.33.130 and 1990 c 59 s 22 are each amended to read
6 as follows:

7 The county auditor of a county in which voting systems are used is
8 responsible for the preparation, maintenance, and operation of those
9 systems, and must provide proof that the system and its component
10 software, in the version used, are state certified. The auditor may
11 employ and direct persons to perform some or all of these functions.

12 **Sec. 4.** RCW 29.33.145 and 1998 c 58 s 1 are each amended to read
13 as follows:

14 An agreement to purchase or lease a voting system or a component of
15 a voting system is subject to that system or component passing an
16 acceptance test, conducted by the county auditor as purchaser or
17 lessee, sufficient to demonstrate that the equipment is the same as
18 that certified by the secretary of state and that the equipment is
19 operating correctly as delivered to the county.

20 **Sec. 5.** RCW 29.33.300 and 1990 c 59 s 26 are each amended to read
21 as follows:

22 No voting device (~~shall~~) may be approved by the secretary of
23 state unless it:

- 24 (1) Secures to the voter secrecy in the act of voting;
- 25 (2) Permits the voter to vote for any person for any office and
26 upon any measure that he or she has the right to vote for;
- 27 (3) Permits the voter to vote for all the candidates of one party
28 or in part for the candidates of one or more other parties;
- 29 (4) Correctly registers all votes cast for any and all persons and
30 for or against any and all measures;
- 31 (5) Provides that a vote for more than one candidate cannot be cast
32 by one single operation of the voting device or vote tally system
33 except when voting for president and vice-president of the United
34 States; and

1 (6) Except for functions or capabilities unique to this state, has
2 been tested(~~(, certified, and used in at least one other state or~~
3 ~~election jurisdiction)) and approved by the appropriate independent
4 testing authority approved by the federal elections commission or its
5 statutory successor using the federal voting systems standards or
6 successor federal standards as the guideline, including for
7 verification of results.~~

8 **Sec. 6.** RCW 29.33.310 and 1990 c 59 s 27 are each amended to read
9 as follows:

10 The ballot (~~(on a single voting device shall))~~ displayed to a voter
11 may not contain the names of candidates for the offices of United
12 States representative, state senator, state representative, county
13 council, or county commissioner in more than one district. (~~In all~~
14 ~~general elections, primaries, and special elections, in each polling~~
15 ~~place the voting devices containing ballots for candidates from each~~
16 ~~congressional, legislative, or county council or commissioner district~~
17 ~~shall be grouped together and physically separated from those devices~~
18 ~~containing ballots for other districts. Each voter shall be directed~~
19 ~~by the precinct election officers to the correct group of voting~~
20 ~~devices.))~~

21 **Sec. 7.** RCW 29.33.320 and 1990 c 59 s 28 are each amended to read
22 as follows:

23 The secretary of state shall not approve a vote tallying system
24 unless it:

25 (1) Correctly counts votes on ballots on which the proper number of
26 votes have been marked for any office or issue;

27 (2) Ignores votes marked for any office or issue where more than
28 the allowable number of votes have been marked, but correctly counts
29 the properly voted portions of the ballot;

30 (3) Accumulates a count of the specific number of ballots tallied
31 for each precinct, total votes by candidate for each office, and total
32 votes for and against each issue of the ballot in that precinct;

33 (4) Accommodates rotation of candidates' names on the ballot under
34 RCW 29.30.040;

35 (5) Produces precinct and cumulative totals in printed form; and

1 (6) Except for functions or capabilities unique to this state, has
2 been tested(~~(, certified, and used in at least one other state or~~
3 ~~election jurisdiction)) and approved by the appropriate independent
4 testing authority approved by the federal elections commission or its
5 statutory successor using the federal voting systems standards or
6 successor federal standards as the guideline, including for
7 verification of results.~~

8 **Sec. 8.** RCW 29.33.330 and 1990 c 59 s 25 are each amended to read
9 as follows:

10 In preparing a voting device for a primary or election, a record
11 (~~shall~~) must be made of the ballot format installed in each device
12 and the precincts or portion of a precinct for which that device has
13 been prepared. Except where provided by a rule adopted under RCW
14 29.04.210, after being prepared for a primary or election, each device
15 (~~shall~~) must be sealed with a uniquely numbered seal and provided to
16 the inspector of the appropriate polling place.

17 **Sec. 9.** RCW 29.33.350 and 1998 c 58 s 2 are each amended to read
18 as follows:

19 At least three days before each state primary or general election,
20 the office of the secretary of state shall provide for the conduct of
21 tests of the programming for each vote tallying system to be used at
22 that primary or general election. The test must verify that the system
23 will correctly count the vote cast for all candidates and on all
24 measures appearing on the ballot at that primary or general election.
25 The office of the secretary of state shall adopt rules specifying the
26 manner of conducting these programming tests. The test (~~shall~~) must
27 verify the capability of the vote tallying system to perform all of the
28 functions that can reasonably be expected to occur during conduct of
29 that particular primary or election. If any error is detected, the
30 cause (~~shall~~) must be determined and corrected, and an errorless
31 total (~~shall~~) must be produced before the primary or election.

32 Such tests (~~shall~~) must be observed by at least one
33 representative from each major political party, if representatives have
34 been appointed by the respective major political parties and are
35 present at the test, and (~~shall~~) must be open to candidates, the

1 press, and the public. The county auditor and any political party
2 observers shall certify that the test has been conducted in accordance
3 with this section. The county auditor shall provide proof that the
4 version of the voting system and software used are state certified.
5 Copies of ~~((this))~~ these certifications ~~((shall))~~ must be retained by
6 the secretary of state and the county auditor. All programming
7 materials, test results, and test ballots ~~((shall))~~ must be securely
8 ~~((sealed))~~ stored until the day of the primary or general election.

9 **Sec. 10.** RCW 29.04.200 and 1998 c 245 s 26 are each amended to
10 read as follows:

11 (1) ~~((Beginning January 1, 1993,))~~ No voting device or machine may
12 be used ~~((in a county with a population of seventy thousand or more))~~
13 to conduct a primary or general or special election in this state
14 unless it correctly records on a separate ballot the votes cast by each
15 elector for any person and for or against any measure and such separate
16 ballots are available for audit purposes after such a primary or
17 election.

18 (2) ~~((Beginning January 1, 1993,))~~ The secretary of state shall not
19 certify under this title any voting device or machine ~~((for use in~~
20 ~~conducting))~~ to conduct a primary or general or special election in
21 this state ~~((unless the device or machine correctly records on a~~
22 ~~separate ballot the votes cast by each elector for any person and for~~
23 ~~or against any measure and such separate ballots are available for~~
24 ~~audit purposes after such a primary or election))~~ that uses punched
25 holes to record the voter's choices.

26 ~~((3) Beginning January 1, 1993, a county with a population of less~~
27 ~~than seventy thousand may use a voting machine or device for conducting~~
28 ~~a primary or general or special election which does not record on a~~
29 ~~separate ballot, available for audit purposes after the primary or~~
30 ~~election, the votes cast by each elector for any person and for or~~
31 ~~against any measure if:~~

32 ~~(a) The device was certified under this title before January 1,~~
33 ~~1993, for use in this state;~~

34 ~~(b) The device otherwise satisfies the requirements of this title;~~
35 ~~and~~

1 ~~(c) Not more than twenty percent of the votes cast during any~~
2 ~~primary or general or special election conducted after January 1, 1998,~~
3 ~~in the county are cast using such a machine or device.~~

4 ~~(4) The purpose of subsection (3) of this section is to permit less~~
5 ~~populous counties to replace voting equipment in stages over several~~
6 ~~years. These less populous counties are, nonetheless, encouraged to~~
7 ~~secure as expeditiously as possible voting equipment which would~~
8 ~~satisfy the requirements of subsection (1) of this section established~~
9 ~~for more populous counties.)~~

10 **Sec. 11.** RCW 29.04.200 and 2003 c ... s 10 (section 10 of this
11 act) are each amended to read as follows:

12 (1) No voting device or machine may be used to conduct a primary or
13 general or special election in this state unless it correctly records
14 on a separate ballot the votes cast by each elector for any person and
15 for or against any measure and such separate ballots are available for
16 audit purposes after such a primary or election.

17 (2) The secretary of state shall not certify under this title any
18 voting device or machine to conduct a primary or general or special
19 election in this state that uses punched holes to record the voter's
20 choices.

21 (3) Beginning January 1, 2006, no voting device or machine that
22 uses punched holes to record the voter's choices may be used to conduct
23 a primary or general or special election in this state.

24 **Sec. 12.** RCW 29.85.051 and 1991 c 81 s 4 are each amended to read
25 as follows:

26 A person is guilty of a gross misdemeanor who knowingly:

27 (1) Deceives any voter in recording his or her vote by providing
28 incorrect or misleading recording information or by providing faulty
29 election equipment or records; ((or))

30 (2) Records the vote of any voter in a manner other than as
31 designated by the voter; or

32 (3) Commits either of the acts under subsection (1) or (2) of this
33 section by electronic means.

34 Such a gross misdemeanor is punishable to the same extent as a
35 gross misdemeanor that is punishable under RCW 9A.20.021.

1 NEW SECTION. **Sec. 13.** A new section is added to chapter 29.85 RCW
2 to read as follows:

3 A person is guilty of a gross misdemeanor punishable under chapter
4 9A.20 RCW who knowingly:

5 (1) Tamper with or impedes the use of any form of electronic
6 voting or vote recording system; or

7 (2) Tamper with or impedes access to a vote reporting or election
8 results reporting system.

9 NEW SECTION. **Sec. 14.** Section 11 of this act takes effect once
10 the state receives funding from the federal government to replace
11 voting systems and vote tallying equipment as required in Public Law
12 107-252 (October 29, 2002), known as the "Help America Vote Act of
13 2002," including any amounts received under subsequent amendments to
14 the act. If federal funding is not provided by January 1, 2005,
15 section 11 of this act is void in its entirety."

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16 In line 1 of the title, after "certification;" strike the remainder
17 of the title and insert "amending RCW 29.33.041, 29.33.081, 29.33.130,
18 29.33.145, 29.33.300, 29.33.310, 29.33.320, 29.33.330, 29.33.350,
19 29.04.200, 29.04.200, and 29.85.051; adding a new section to chapter
20 29.85 RCW; prescribing penalties; and providing a contingent effective
21 date."

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